IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 350 of 1996
With
CRIMINAL APPEAL No. 365 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATHOD RAGHUSINGH @ RANJITSINGH PARBATSINHG - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

CR.A No.350/1996
MR MG NAGARKAR for Appellant(s) : 1,
MS HANSA PUNANI, APP for Opponent(s) : 1,

CR.A No.365/1996
Ms CM SHAH for MR VH PATEL for Appellant(s) : 1,2
MS HANSA PUNANI, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/11/2007

ORAL JUDGMENT

1. These appeals are filed by the original accused challenging common judgment and order dated 4.3.1996 rendered by learned Additional Sessions Judge, Mehsana in Sessions Case No.213/1994.

2. As emerging from the charge-sheet, the prosecution case was that on 7.1.1994 when the complainant was engaged as Caretaker in the Forest Department Plantation, he found the accused cutting berry trees of the Forest Department at about 3 O' Clock in the afternoon. Upon being stopped accused Nos. 2 and 3(appellants in Criminal Appeal No.365/1996) caught hold of the complainant and accused no.1(appellant in Criminal Appeal No.350/1996), gave a “Dhariya” blow as a result of which right hand thumb of the complainant was cut and completely severed. The accused were therefore, charged with commission of offences punishable under Section 447, 326 read Section 34/114 of the Indian Penal Code. They were also charged with offence punishable under Section 135 of the Bombay Police Act and Section 33 of the Forest Act.

3. Learned Additional Sessions Judge convicted accused No.1 for offences punishable under Sections 333 and 326 of the Indian Penal Code and sentenced him to undergo rigorous

imprisonment for a period of three years and pay a fine of Rs. 1,000/-. Accused Nos. 2 and 3 were convicted under Sections 333 and 326 read with Section 114 of the Indian Penal Code and ordered to undergo rigorous imprisonment for a period of three months and pay a fine of Rs. 500/-. All the accused were convicted for offences punishable under Sections 447 and 427 and sentenced to undergo imprisonment for a period of 15 days and pay a fine of Rs. 100/-. Substantive sentence was made concurrent. They were however, acquitted of offences punishable under the Indian Forest Act and Bombay Prohibition Act.

4. The complainant Madansinh Himmatsinh Rathod-PW3 was examined at exh.27. In his deposition he stated that on the date of incident, he was discharging his duties as Watchman in the Forest Department. His duty requires him to keep a watch on the forest area situated towards the river from Anodia village. On the date of incident, at 12 O' clock, he had come to home for lunch. After taking lunch he went back to his duty. At about 3 O' clock, when he reached the plot of the forest department near the village, he found that all the three accused were cutting down berry trees of the Forest Department. They had already cut down three trees. When the complainant asked them not to do so, accused Nos. 2 and 3 held him and accused

No.1 gave a “Dhariya” blow chopping off his left hand thumb. He thereupon started shouting. Hearing his shouts, Ramansinh and Vijusinh came there upon which the accused ran away. The complainant thereafter, went to Vijapur police station and lodged his complaint. Along with police yadi, he went to Vijapur Government hospital for treatment. There he was referred to Ahmedabad Civil Hospital and took treatment there. He identified the accused in the Court.

4.1 In the cross examination, he stated that there is a distance of about 200 feet between the plot of the Forest Department and the river bed. He denied the allegation of previous enmity between him and the accused and also denied that there was fight between the two groups.

5. Ramansinh Dansinh-PW4 was examined at exh.29. He stated that he knows the accused since they reside in a hamlet next to their village. On the date of incident when he and Vijusinh were preparing plots in the river for cultivation of Melon, they heard shouts of Madansinh near the Forest Department plot and, therefore, they went there. They saw the accused persons running away from the spot. Accused No.1 had a “Dhariya”. The other two persons had no weapons. They met Madansinh and say that his left hand thumb has been severed and was bleeding. Madansinh had

told him that upon being prevented from cutting down the trees, accused No.1 had given blow with “Dhariya”. Nothing substantial has come out in the cross examination of this witness. However, it may be noted that in his deposition, he has stated that the Forest Department plot was at the distance of about one kilometer from where he and Vijusinh were working.

6. By pursis exh.30, prosecution dropped Vijusinh as witness stating that his deposition would only be repetition of evidence already brought on record.

7. Panchnama of the fallen berry trees was drawn and produced before the Court. Blood soiled clothes of the complainant was also produced before the Court along with Panchnama.

8. Vithalbhai Saburbhai Parmar-PW11 was examined at exh.46. He was the Forest Guard at the relevant time. He was examined to prove that the complainant was engaged for looking after the Forest plots in Anodia village at the relevant time and on the date of incident he was on duty.

9. Dr. Bhogilal Keshavlal-PW1 was examined at exh.21. He was the Medical Officer in charge of Vijapur Health Centre. In his deposition, he has stated that the complainant was brought before him at about 5:30 in the evening on 7.1.1994. He

found that his left thumb was completely cut off from the root. He had abrasion of 1cm x 0.5cm on the left arm. He had taken X-ray of the left hand of the patient which revealed that there was a fracture. He opined that injury could have been caused by a sharp edged weapon.

9.1 In his cross examination, he denied the possibility of complainant receiving such injury accidentally falling down on a glass or tin surface.

10. On the basis of above evidence, learned advocate Shri Nagarkar for the appellant submitted that the prosecution has not succeeded in establishing the charges against the said accused. He submitted that as per the complainant though only one “Dhariya” blow was given, Medical Certificate and Doctor's evidence suggests that there were other injuries also. Thus the testimony of the witness is not reliable.

10.1 It was contended that there were cross cases and incident as alleged by the complainant had never taken place.

10.2 It was further contended that in any case the sentence is harsh.

11. Learned advocate Ms. C.M. Shah for accused Nos.

2 and 3 submitted that the involvement of said accused is not established. She submitted that as per Ramansinh-PW4, he was working at a distance of about one kilometer from the spot where the incident took place. It was therefore, not possible for him to hear the shouts. In his deposition, Ramansinh-PW4 also does not involve accused Nos. 2 and 3. She further submitted that in any case after long passage of time, the appellants should not be asked to undergo imprisonment to serve out rest of the sentence.

12. On the other hand, learned APP Ms. Hansa Punani opposed the appeal. She submitted that there was voluminous evidence on record which was taken into account by the learned Additional Sessions Judge. The judgment is therefore, just and proper.

13. Having heard learned advocates for the parties, it would appear that the complainant Madansinh-PW3 clearly stated in his evidence that on the date of incident, he was employed as a Watchman by the Forest Department. While performing his duties at about 3 O Clock in the afternoon, he found that accused were cutting down the berry trees of the Forest Department. Upon being stopped accused Nos. 2 and 3 caught him and accused No.1 gave a “Dhariya” blow and chopped off his left thumb. His version was supported by

Ramansinh-PW4(exh.29). He was carrying on agricultural operation in the near vicinity. Though this witness stated that distance between his plot and scene of offence is about one kilometer, the same was only an estimation and cannot be blindly relied upon to discard his version altogether. Complainant Madansinh clearly stated that distance between two place was about 200 feet. Even Panchnama records that scene of offence is close to the river bed. Witness Ramansinh-PW4 along with Vijusinh ran to the spot upon hearing the complainant shouting. They found that his thumb was cut and he was bleeding. He saw accused persons running away.

14. Thus account of the complainant is supported by the witness Ramansinh-PW4. Simply because Vijusinh was not examined as witness, no benefit can be given to the defence. Prosecution passed pursis stating that it would only amount to repetition of evidence already brought on record.

15. Dr. Bhogilal Keshavlal-PW1 also supported prosecution case. He had treated the complainant on 7.1.1994 at Vijapur Health Centre. He had found that the left hand thumb of the complainant was cut. He also found couple of other external injuries. These injuries were however, superficial. They were found on the left arm of the complainant. Injuries were

abrasion and lacerated wound and could have been caused by scuffle when the complainant was forcibly held by other two accused. The submission of the Counsel for the accused No.1 that these injuries did not correspond to the blow allegedly given to the complainant, therefore cannot be accepted.

16. Prosecution had also examined the Forest Department Official Vithalbhai-PW11 at exh.46 to establish that the complainant was engaged at the relevant time as Watchman and that he was on the date of incident on duty. He was assigned duty of looking after the Forest Department plots near the village Anodia close to river.

17. Considering all these aspects of the matter, I do not find that learned Judge erred in convicting the accused. The question of sentence however, remains. Accused Nos. 2 and 3 were sentenced to undergo rigorous imprisonment for a period of three months. They had not given any blow to the complainant. Their role was primarily of catching hold of the complainant while accused No.1 gave a “Dhariya” blow. 13 years have passed since the incident took place.

18. Considering all these aspects of the matter, I find that it would not be appropriate to ask these accused to serve out rest of the sentence. They have their individual families to support and are not stated to be habituated criminals

having any past criminal record.

19. So far as accused No.1 is considered, I find that sentence is harsh. As noted, he is sentenced to undergo rigorous imprisonment for a period of three years. It is true that he has caused grievous hurt by giving a “Dhariya” blow. However, the act was one of momentary indiscretion in the heat of moment. It is stated that he is carrying permanent injuries. Considering all these aspects of the matter, his sentence is reduced to simple imprisonment for a period of one year.

20. Under the circumstances, following order is passed :

1) Conviction of all the accused is maintained.

2) Sentence imposed by the learned Additional Sessions Judge against accused No.1 under Sections 333 and 326 is substituted by simple imprisonment for a period of one year.

3) Though conviction of accused Nos. 2 and 3 is upheld, they are given benefit of probation. They shall however execute bond of good behavior for a period of six months before the trial Court. If such a bond is breached, they will have to serve out the sentence as provided by the trial Court.

4) Direction for payment of fees is not disturbed.

5) Bail bond of accused Nos. 2 and 3 stand cancelled.

6) Bail of accused No.1 stand cancelled.

21. With these directions, the appeals are disposed of.

(Akil Kureshi,J.)

(raghu)